

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(San Francisco, California)

ESCO FOODS, INC.

Employer

and

JAMES O. PAPALIAS, AN INDIVIDUAL

Petitioner

WAREHOUSE UNION LOCAL 6, ILWU

Union

20-RD-2368**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 1/
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 3/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 4/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 5/

All full-time and regular part-time freight handlers, packers, checkers, shipping and/or receiving clerks, order fillers (open stock), stock clerks (open stock), order fillers (full-case-grocery industry), order fillers (full case-other than grocery), maintenance man A, maintenance man B, maintenance man C, maintenance man D, bottling and packaging line operators (including labeling, pre-pricing, marking, packing and hand-filling operations), freight handlers, warehousemen, and packers, working foremen/foreladies A, working foremen/foreladies B, lift equipment stackers, and (operators of fork-type lift jitneys) employed by the Employer at its San Francisco, California facility; excluding guards and all supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained

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their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by WAREHOUSE UNION LOCAL 6, ILWU.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before July 9, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by July, 16, 2003.

Dated July 2, 2003

at San Francisco, California

/s/ Rober H. Miller

Regional Director, Region 20

- 1/ No representative of the Union appeared at the hearing. The record shows that a copy of the petition and the Notice of Representation Hearing were served on the Union by facsimile transmission and by first-class mail on June 2, 2003. The Notice of Hearing advised the Union that the hearing in this proceeding would be held on June 10, 2003, in the Board's Regional office located at 901 Market Street, Suite 400, San Francisco, California. The hearing officer also represented that the Board's Regional Office had also notified the Union of the hearing by telephone. As the Union was given prior notice of the time and place of the hearing, it is concluded that the hearing officer's decision to proceed with the hearing in the absence of a representative of the Union did not constitute prejudicial error.
- 2/ The Employer is a California corporation engaged in the business of food processing with an office and place of business in San Francisco, California. The Employer's President and Chief Executive Officer, Marc Bosschart, testified that the Employer produces food products, including ice cream, syrups and toppings, flavors, barbeque sauces, marinades, and salad dressings. He further testified that during the past calendar year, the Employer received revenue in excess of \$50,000 from the sales or performance of services directly to customers outside the State of California. The record contains a commerce questionnaire signed by President Bosschart that shows that the Employer's gross revenue for the same period equaled or exceeded one million dollars. As such evidence shows that the Employer meets the Board's jurisdictional standards for the assertion of commerce jurisdiction under both a retail or wholesale standard, it is concluded that the Employer is engaged in commerce and that it will effectuate the purposes of the Act to assert jurisdiction in this matter.
- 3/ The Employer, as a member of the Industrial Employers and Distributors Association (IEDA), was party to a collective-bargaining agreement with the Union effective from June 1, 1998, to and including May 31, 2003 (the Agreement). The Agreement covered the following unit of employees at the Employer's 131 Russ Street, San Francisco, California location:

All full-time and regular part-time freight handlers, packers, checkers, shipping and/or receiving clerks, order fillers (open stock), stock clerks (open stock), order fillers (full-case-grocery industry), order fillers (full case-other than grocery), maintenance man A, maintenance man B, maintenance man C, maintenance man D, bottling and packaging line operators (including labeling, pre-pricing, marking, packing and hand-filling operations), freight handlers, warehousemen, packers, working foremen/foreladies A, working foremen/foreladies B, lift equipment stackers, and (operators of fork-type lift jitneys); excluding all supervisors and guards as defined by the Act.

The Agreement sets forth the terms and conditions of employment of the employees in the unit, including wages and benefits, vacation, seniority, layoffs, shift starting and quitting times, overtime, etc. Employer President Bosschart testified that the

Employer has recognized the Union as the exclusive collective-bargaining representative of the employees in the unit since the 1930s. According to Bosschart, he has communicated with Union Secretary Fred Pecker about contract matters. Foreman James O. Papalias testified that he is a member of the Union, that he has attended regular membership meetings of the Union, and that employees participated in those meetings. In view of the foregoing, I find that the Union is a labor organization within the meaning of the Act.

- 4/ As indicated above, the collective-bargaining agreement between the Employer and the Union expired on June 1, 2003. The petition in this case was filed on June 2, 2003. The Employer introduced evidence at the hearing showing that by letter dated March 26, 2003, it notified IEDA that effective immediately, it was withdrawing its authority from the IEDA to conduct bargaining on the Employer's behalf with the Union for a new master agreement covering the Employer's 131 Russ Street, San Francisco location. The letter further stated the Employer's desire to terminate its agreement with the Union, effective June 1, 2003. The record reflects that the Employer sent a copy of this letter to Union Secretary, Fred Pecker.

By letter dated March 31, 2003, the Employer's president also notified the Union of the Employer's withdrawal of authority from IEDA to conduct bargaining on its behalf and its desire to terminate the Agreement with the Union effective June 1, 2003. In view of the foregoing, I find that no contract bar exists to this petition.

- 5/ Employer President Bosschart testified that the unit description contained in the Agreement is correct for the Employer. The record reflects that the Employer is a closely-held family corporation. The Employer is headed by President/Chief Executive Officer Bosschart. William Bosschart, the father of Marc Bosschart, is the Employer's secretary. Marc Bosschart's wife, Michelle, works for the Employer as an office employee on a part-time basis. Carole Jue is an office employee who handles the bulk of the office work. Jim Papalias is the plant foreman and Rich Papalias, Jim Papalias' brother, is a plant worker. Three of President Bosschart's children (Matthew, Brian and Amy), currently or in the past have worked for the Employer in the plant performing various functions, including both office clerical and plant-type work. President Bosschart testified that sons Matthew and Brian currently work part-time for the Employer and that Amy will be working part-time shortly. President Bosschart's nephew, Robert Bosschart, also works in the plant.

President Bosschart testified that he and his father are the only managerial and/or supervisors of the Employer and that only he is responsible for scheduling employee's hours; approving employee time off; and granting employee overtime. There is no evidence in the record that Plant Foreman Jim Papalias possesses or exercises statutory supervisory or managerial authority.

Analysis. It is well established that the appropriate unit in a decertification election must be coextensive with the certified or recognized unit. *Campbell's Soup Co.*, 111 NLRB 234 (1955). Thus, the unit herein appears in accordance with the Agreement.

Based on the record, it appears that the unit currently includes three employees: Robert Bosschart, Rich Papalias and Jim Papalias. The definition of employee in Section 2(3) of the Act specifically excludes children of "any individual employed by his parent or spouse." Therefore, as the Employer is a closely held family corporation, Matthew, Brian and Amy Bosschart, the children of the Employer's owner and president, Marc Bosschart, will be excluded from the unit. *Union Mfg Co.*, 291 NLRB 436 (1988). As there is no showing that Marc Bosschart's nephew, Robert Bosschart, receives any special privileges by virtue of his relationship with the Employer's owner, he will be included in the unit. *Allen Services Co., Inc.*, 314 NLRB 1060, 1062-1063 (1994). As President Bosschart's wife, Michelle, is an office clerical employee who does not perform any unit work, she will be excluded from the unit as an office clerical employee.

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